# **MINUTES**

# COLORADO REAL ESTATE COMMISSION MEETING April 3, 2012

# MINUTES – INDEX

	<b>PAGE</b>
ADJOURN	13
COMPLAINT MATTERS:	
1. Complaint #2011050571 (CR)	5
2. Complaint #2012010114 (WP)	6
3. Complaint #2012010050 (AL)	7
4. Complaint #2011121367 (JO)	7
5. Complaint #2011060752, 2011121418 (RM)	8
EXECUTIVE SESSION MATTERS:	
A. Complaint #2011020151, 2011030385 (JM)	12
EXPEDITED SETTLEMENT MATTERS (ESP):	
A. Report on Initial Decision's and Final Agency Orders	11
B. Complaint #2010091078 (JS)	11
C. Complaint #2008060836 (MO)	11
D. Complaint #1996060421 (CB)	12
E. Complaint #2005090791 (WF)	12
F. Complaint #2004120915 (JH)	12
G. Complaint #1990010012 (WP)	12
H. Complaint #2011020146 (SK)	11
LICENSING MATTERS:	
A. Licensing Application (RB)	9
B. Preliminary Advisory Opinion (TL)	9
C. Preliminary Advisory Opinion (AP)	9
D. Licensing Application (BT)	10
E. Preliminary Advisory Opinion (BA)	10
MINUTES – APPROVAL	
CREC Meeting – February 7, 2012	3

POLICY MATTERS:	
A. Closing Instructions	4
B. Attorney Prepared Forms Policy	4
C. Disciplinary Icon Update	4
D. Education Task Force Appointments	4
E. CP42 – Apartment Building or Complex Managers	4
F. Proposed Revisions to Commission Rules D-14, E-22, E-28 and E-46	4
G. Relocation Companies, Administrative Fees and HOA's	4
H. Legislative Update	5
I. Agenda Items for Next Meeting	5
J. Service Recognition Award – Doug Ring	5
K. Selection of Officer Appointments	5
PUBLIC COMMENT	3

# MINUTES COLORADO REAL ESTATE COMMISSION MEETING April 3, 2012 COLORADO DIVISION OF REAL ESTATE 1560 BROADWAY, SUITE 1250-C DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on April 3, 2012. Those Commissioners in attendance were Chair Doug Ring, Gina Piccoli, Kristin Bronson and Chris McElroy. Also attending were Marcia Waters, Director; Cary Whitaker, Deputy Director; Penny Elder, ESP Program Manager; Hollis Glenn, Enforcement Program Manager; Eric Turner, Education, Policy and Communications Manager; Sean Rhyne, Licensing Officer; Peggy Moroney, Program Support; Terry Hugar and Melissa Phipps, Attorney General's Office; and several members of the Commission's Staff.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

The meeting was called to order by Commissioner Ring at 9:14 a.m.

#### **ORDER OF BUSINESS**

#### **Approval of Minutes – February 7, 2012**

It was moved by Commissioner Piccoli and seconded by Commissioner McElroy to approve the Minutes of February 7, 2012, as presented.

#### Motion unanimously carried.

## **PUBLIC COMMENT:**

Lisa Rice, Vice President of American Home Show – addressed the Commission with her concerns regarding Rules E-28 which states that licensees cannot receive compensation for services rendered in connection with a home warranty sale.

Gary Walt from TI Services came to follow up on his presentation regarding title insurance and consumers from the February commission meeting. The Commission let him know they were still waiting on information from the Division of Insurance.

## **POLICY MATTERS:**

## **Closing Instructions-**

Director Marcia Waters, along with Kent Levine and Alan Stein from the Forms Committee, suggested to the Commission to make the Closing Instructions Form an optional form for brokers. This matter has been deferred to the June Meeting for further discussion.

## **Attorney Prepared Forms Policy-**

Director Marcia Waters asked the Commission to reconsider the policy that does not allow a broker to use an attorney to draft a form, if a Commission Approved form is available. The Commission gave their consent to move forward with the Divisions suggestions.

## **Disciplinary Icon Update-**

Director Marcia Waters relayed the changes and their cost in relation to the changes in the database to be able to remove an icon form a licensee's record without removing all disciplinary records.

## **Education Task Force Appointments-**

Eric Turner, the Education, Policy and Communications Manager, relayed to the Commission the intention of the current seven members of the Education Task Force to renew their appointments. He also presented the nominations for three new applicants to the task force. It was moved by Commissioner Piccoli and seconded by Commissioner McElroy to approve the reappointments and nominations to the Education Task Force.

#### Motion unanimously carried.

#### **CP-42 – Apartment Building or Complex Managers-**

Director Marcia Waters suggested the Commission vote on a proposed Position Statement regarding apartment complexes, allowing an unlicensed person to sign leases with a power of attorney from the owner of the complex. It was moved by Commissioner McElroy and seconded by Commissioner Piccoli to adopt the position statement.

#### Proposed Revisions to Commission Rules D-14, E-22, E-28 and E-46-

Director Marcia Waters proposed revisions to several rules which will be presented for rulemaking at the June 5<sup>th</sup> Commission Meeting. The rules proposed for rulemaking were D-14 - Errors and omissions (E&O) insurance, E-22 - Inducements from settlement producers prohibited, E-28 - pre-owned home warranty service company fees, and E-46 - Affiliated Business Arrangements.

## Relocation Companies, Administrative Fees and HOA's-

Commissioner McElroy discussed relocation companies charging brokers referral fees as well as administrative fees. He also discussed with the Commission HOA transfer fees.

## Legislative Update -

Director Marcia Waters provided the Commission with another update on this year's Legislative Session.

- HB12-1105, Concerning Wind Energy Property Rights –still going through the house
- HB12-1165, Concerning Disclosure of Radon Hazards has died
- HB12-1110, Concerning the Regulation of Appraisal Management Companies passed the second reading at the house.
- HB12-1036, Concerning Exemption from the "Colorado Open Records Act" for Investigative Files. This bill is being sponsored by the Attorney General's Office still moving through the legislature

## Agenda Items for the Next Meeting-

Items to be discussed at the June meeting include forms, an update from the Division of Insurance and the rewrite of rules D-14, E-22, E-28 and E-46

## Service Recognition Award – Doug Ring-

Chairman Doug Ring is recognized for both serving as chair for the last year as well as serving on the Commission for the last three years.

## **Selection of Officer Appointments-**

It was moved by commissioner Piccoli and seconded by commissioner Bronson to nominate Chris McElroy as chairman of the Commission.

#### Motion unanimously carried.

The Commission deferred the appointment of Vice-Chair to the upcoming June Meeting.

## **COMPLAINT MATTERS:**

**NOTICE:** The following complaint matters contain summaries of investigative findings and proposed offers of settlement. Ultimate settlement terms, imposition of discipline or findings of license law violations may differ from those originally considered by the Commission. The investigative report, exhibits and all other Commission records relating to each proceeding may be public records as defined by the Colorado Open Records Act, § 24-72-203, C.R.S. and any other applicable laws.

## 1. Complaint #2011050571 (CR) -

The investigative report concerning a complaint filed by Fleming Schutrumpf against the respondent in Complaint #2011050571 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant states he entered into a management agreement with the respondent who was employed as an associate broker yet he managed properties under a different company. The complainant alleges the respondent never maintained trust accounts, commingled funds, and the accounts were not in the name of the employing broker. Respondent acknowledges he failed to keep the funds in a trust account or under the control of his employing broker. Respondent admits he is not a good accountant yet he is not a thief and never took any money that he wasn't entitled to. He acknowledges that he did not reconcile trust accounts. The respondent is no longer employed at the original brokerage and he has changed his license authority to an independent broker working under his business name. An audit of the company was unable to determine an actual shortage as the information on documents were not consistent therefore unreliable to make a figure computation; and
- B. These are possible violations of: § 12-61-113(1)(g), C.R.S. failure to account for funds received; § 12-61-113(1)(n), C.R.S. unworthy, incompetent practice; § 12-61-113(1)(k), C.R.S. violation of any Commission rule; Commission Rules E-1(a) accounts in name of broker/business entity; E-1(c) accounts in name of employing broker only; E-1(p) recordkeeping requirements; E-16 owner-held security deposits; and
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. He shall pay a fine to the Commission in the amount of up to \$6,000; and
- E. The respondent shall successfully complete real estate education courses in Property Management and in Brokerage Administration; and
- F. The Division will conduct a financial audit of the respondent's business within three months.

## Motion unanimously carried.

#### 2. Complaint #2012010114 (WP) -

The investigative report concerning a complaint filed by Marcia C. Braddock and the Commission on its own motion against the respondent in Complaint #2012010114 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

A. During 2009, the CREC received information that the respondent was conducting professional property management without proper licensure, and the respondent agreed to cease such practice. During 2011 the CREC received another such complaint, shortly followed by respondent's application for licensure. In December of 2011, the CREC granted a license with the condition that the respondent remain under supervision for five years of active practice. The respondent's license has remained on inactive status since original issuance, but on January 30, 2012, the CREC received a complaint that the Respondent was managing property while inactively licensed. The respondent admits to managing real property while inactively licensed. The respondent maintains that "Trying to find employment has

- been extremely difficult with a restricted license" and "I continued to practice property management as an inactive broker for economic reasons."; and
- B. These are possible violations of: § 12-61-113(1)(k), C.R.S. violation of any Commission order (stipulation); § 12-61-102, C.R.S. practice while unlicensed/inactive; and
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. He shall pay a fine to the Commission in the amount of up to \$2,000; and
- E. The respondent's real estate broker's license shall be suspended for a period of 30 days; and
- F. He shall successfully complete a real estate education course in Property Management.

## Motion unanimously carried.

## 3. Complaint #2012010050 (AL) -

The investigative report concerning a complaint filed by the Commission on its own motion against the respondent in Complaint #2012010050 was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On January 13, 2012, the respondent pled guilty to a count of Criminal Attempt to Commit Forgery, a Class 6 Felony, in violation of section 18-5-102(1)(c), C.R.S. According to the police report the respondent took money orders from her employer to finance two vacations. The respondent's Colorado real estate broker's license expired on September 21, 2011, but she may reinstate prior to September 21, 2014. During a March 13, 2012 telephone conference, the respondent declined to speak with the investigator and she did not submit a written statement as to her criminal conviction; and
- B. This is a possible violation of: § 12-61-113(1)(m), C.R.S. conviction/plea to specified crimes; and
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be revoked; and
- E. She shall pay a fine to the Commission in the amount of up to \$1,000.

#### **Motion unanimously carried.**

#### 4. Complaint #2011121367 (JO)-

The investigative report concerning a complaint filed by the Commission on its own motion against the respondent in Complaint #2011121367 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On December 19, 2011, the respondent pled guilty to counts of Felony Marijuana Cultivation and Misdemeanor Marijuana Possession and received a deferred sentence with 2 years supervised probation. The respondent failed to report the foregoing pleas to the Commission. According to the respondent, he entered such pleas to avoid proceeding to trial and possible conviction of all of the original charges; however, had he opted for a trial, he would have disputed the basis for such charges, i.e., that he possessed more marijuana plants than authorized for a licensed medical marijuana caregiver. The respondent maintains that he failed to notify the Commission as to the above matters because he was unaware of the Commission's reporting requirement; and
- B. These are possible violations of: § 12-61-113(1)(m), C.R.S. conviction/plea to specified crimes; § 12-61-113(1)(k), C.R.S. violation of any Commission rule; and Commission Rule E-49 notification of criminal conviction within 30 days; and
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. He shall pay a fine to the Commission in the amount of up to \$500; and
- E. The respondent's real estate broker's license shall be on probationary status for a period of two years to run concurrent with his sentence.

## Motion unanimously carried.

## 5. Complaint #2011060752 and #2011121418 (RM)-

The investigative report concerning a complaint filed by Alex Pankonin, Leyla Scott and the Commission on its own motion against the respondent in Complaint #2011060752 and #2011121418 was presented to the Commission with accompanying documentation and information supplied by the respondent. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. Respondent allegedly fraudulently released his own Deed of Trust on his personal property located at 1385 Candleglow Street, Castle Rock, Colorado by representing that he was the Vice President of Lehman Brothers Bank, FSB/Aurora Bank, FSB. Respondent provided documentation to Division staff in which he indicates that he is the Vice President of the above institutions as well as documentation which indicates that the lien on Candleglow Street was discharged through a bankruptcy filing. Finally, the respondent admits in an email to his tenants at Candleglow Street that he is attempting a loan modification for Candleglow Street as an "owner occupied."; and
- B. These are possible violations of: § 12-61-113(1)(c), C.R.S. deliberate misrepresentation/false promise; § 12-61-113(1)(n), C.R.S. unworthy, incompetent practice; § 12-61-113(1)(t), C.R.S. dishonest dealing; and
- C. The respondent's real estate broker's license shall be publicly censured; and
- D. The respondent's real estate broker's license shall be revoked; and
- E. He shall pay a fine to the Commission in the amount of up to \$10,000.

#### Motion unanimously carried.

## **LICENSING MATTERS:**

## **Licensing Matter A (RB)-**

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This Applicant disclosed that in 2008, he entered into a stipulated agreement for revocation of his Colorado real estate broker's license. Such stipulation was based upon a 2006 Felony Forgery conviction in a Colorado court in which he served a 90-day jail sentence and three years probation. Because the Felony Forgery was related to two real estate transactions, the Applicant was ordered by the court to relinquish his real estate license. The Applicant never informed the Commission about the conviction and did not relinquish his license. Subsequently an investigation was opened up and his license was revoked in 2008. In his application, the respondent has taken full responsibility for his actions and is sorry. He further states be believes he has the "tools...and the experience to avoid losing control." A written statement and interview from his probation officer confirms that the terms of the probation were successfully completed and he supports the application

It was moved and seconded by the Commission to deny the application.

## Motion unanimously carried.

## **Licensing Matter B (TL)-**

The Commission considered the Preliminary Advisory Opinion (DC) for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This PAO Applicant disclosed that on December 15, 2006, she signed a Consent Order for the revocation of her Arizona real estate salesperson's license; and that in such order, she admitted to obtaining the credit history of another by falsely representing that such information was to be used for real estate transaction purposes. According to the Applicant, she sought such information in an attempt to locate her husband's daughter by his former wife. The applicant stated that since then, she has "matured greatly and understands the ethical responsibilities and duties involved in holding a license. During this investigation, the Arizona Department of Real Estate declined to comment whether any application for relicensure, if submitted by this particular individual, would or would not be granted.

It was moved and seconded by the Commission to issue a favorable opinion with a 5-year restriction upon licensure.

#### Motion unanimously carried.

## **Licensing Matter C (AP)-**

The Commission considered the Preliminary Advisory Opinion (DC) for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This PAO Applicant disclosed that on December of 2004, in an Ohio court, she pled guilty to a count of Aggravated Trafficking in Drugs, a 4th Degree Felony, and accordingly served a prison term of 5 months followed by 18 months of probation. The case documents have been sealed but she voluntarily disclosed her guilty plea. The Applicant

disclosed that she was arrested for selling illegal mushrooms while touring with the Grateful Dead. The Applicant states that after completing the terms of her sentence she earned a master degree in social science.

It was moved and seconded by the Commission to issue a favorable opinion.

## Motion unanimously carried.

## Licensing Matter D (BT)-

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant. This Applicant disclosed that in 2010, he pled guilty to a felony charge of Marijuana Cultivation in a Kansas court, and successfully completed his court-ordered probation in 2011. According to the Applicant, through a police surveillance, he was observed entering and purchasing a grow light and fertilizer from a hydroponic gardening store; and police thereafter obtained a search warrant and found marijuana plants and processed marijuana in his residence. In his written statement to the Commission, the Applicant notes that "I will not attempt to make any excuses or explanations for my actions that led to my situation; it was simply a lack of good judgment and an overall poor set of choices. I made the decision to illegally cultivate marijuana on a strictly personal basis." A review of his mortgage license history in Kansas did not show any discipline.

It was moved and seconded by the Commission to issue a restricted license. The applicant's real estate broker's license will be restricted for a period of five years, requiring direct supervision of an employing broker.

## Motion unanimously carried.

## **Licensing Matter E (BA)-**

The Commission considered the Preliminary Advisory Opinion (SS) for a real estate broker's license together with accompanying documentation and information supplied by the applicant. On February 14, 2012 Mr. Alexander requested a Preliminary Advisor Opinion regarding re-licensure. He disclosed, and the investigation revealed that the Applicant's license was revoked by the Commission in August, 2010, and that he paid a fine in the amount of \$10,000.00 at that time. The revocation was the result of an investigation completed by Commission staff which

revealed, that the Applicant, among other things, was providing down payment money to clients which was not revealed to lenders on the HUD. The Applicant charged for these down payment loans, and failed to reveal that profit to the lenders, or to his employing broker.

It was moved and seconded by the Commission to issue an unfavorable opinion.

#### Motion unanimously carried.

## **EXPEDITED SETTLEMENT PROCESS (ESP) MATTERS:**

## ESP Matter A - Report on Initial Decisions and Final Agency Orders

NAME	COURT ACTION	DISPOSITION
Thadaus Shuvon Jackson	<b>Initial Decision for</b>	FAO Signed 2/8/12
	Revocation	
Maryse Elias	<b>Initial Decision for</b>	FAO Signed 2/8/12
	Revocation	
Kimberly Diane Myers	<b>Initial Decision for</b>	FAO Signed 3/30/12
	Revocation & \$7,000 civil	
	penalty	
James C. Coleson	Initial Decision for	FAO Signed 3/30/12
	Revocation & \$2,500 civil	
	penalty	
Alvin R. Smith, III	Initial Decision for	FAO Signed 3/29/12
·	Revocation	

**NOTE:** Commissioner McElroy recuses himself from consideration of the next case and leaves the room at 10:53 a.m.

## **ESP Matter B, Complaint #2010091078 (JS)**

The Commission was requested to reconsider discipline in Complaint #2010091078 (JS). After discussion, it was moved by Commissioner Bronson and seconded by Commissioner Piccoli to defer a decision on the discipline until the next meeting to asses any efforts by the respondent to pay restitution to the complainant.

## Motion unanimously carried.

**NOTE:** Commissioner McElroy returns to the room at 11:02 a.m.

#### ESP Matter H- Complaint #2004120915 (JH)- (agenda item moved out of order)

The Commission was presented with a counter-offer from the respondent in Complaint #2004120915 (JH). After discussion, it was moved by Commissioner Bronson and seconded by Commissioner Piccoli to keep the original offer as voted on previously.

## Motion unanimously carried.

## **ESP Matter C – Complaint #2008060836 (MO)**

The Commission was requested to reconsider discipline in Complaint #2008060836 (MO). After discussion, it was moved by Commissioner Piccoli and seconded by Commissioner Bronson to keep the disciplinary icon on the license record.

## Motion unanimously carried.

## **ESP Matter D – Complaint #1996060421 (CB)**

The Commission was requested to reconsider discipline in Complaint #1996060421 (CB). After discussion, it was moved by Commissioner Piccoli and seconded by Commissioner Bronson to allow removal of the disciplinary icon on the license record.

## Motion unanimously carried.

## ESP Matter E- Complaint #200509791 (WF)

The Commission was requested to reconsider discipline in Complaint #200509791 (WF). After discussion, the Commission decided to defer the matter to the June Meeting pending an audit of the respondents business.

## **ESP Matter F– Complaint #2004120915 (JH)**

The Commission was requested to reconsider discipline in Complaint #2004120915 (JH). After discussion, it was moved by Commissioner Piccoli and seconded by Commissioner McElroy to keep the disciplinary icon on the license record.

## Motion unanimously carried.

## ESP Matter G- Complaint #1990010012 (WP)

The Commission was requested to reconsider discipline in Complaint #1990010012 (WP). After discussion, it was moved by Commissioner Piccoli and seconded by Commissioner McElroy to keep the disciplinary icon on the license record.

## Motion unanimously carried.

## **EXECUTIVE SESSION:**

It was moved, seconded and approved by more than two-thirds vote by the Commission that pursuant to \$24-6-402(3)(a)(II), C.R.S., to convene the Colorado Real Estate Commission into Executive Session for the purpose of receiving legal advice pursuant to C.R.S. \$24-6-402(3)(a)(II) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice on specific legal questions regarding Complaint #'s 2011020151, 2011030385 (JM)

#### Motion unanimously carried.

The Commission adjourned out of Executive Session at 11:59 p.m.

## **EXECUTIVE SESSION MATTERS:**

Executive Session Matter – Complaint #'s 2011020151, 2011030385 (JM) – AAG Melissa Phipps-

The Commission was presented with a reconsideration on Complaint #'s 2011020151, 2011030385 (JM). After discussion, it was moved by Commissioner Bronson and seconded by Commissioner Piccoli to recommend PC, a \$7500 fine, a 30 day suspension and coursework in Property Management, Brokerage Relationships and Ethics.

## Motion unanimously carried.

Δ	D	T	N	T	JR	N	•
$\overline{}$	.,	• •	` ,	•	, ,		

The Real Estate Commission meeting adjourned at 12:00 p.m. on April 4, 2012.

Marcia Waters, Director Colorado Division of Real Estate